IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.526 OF 2005.

Smt. Bayadabai Nana Gadgade
& Others ..Appellants

versus

Shivling Shivmurti Gadgade ..Respondent.

Mr.Surel Shah for the appellants

Coram : S.R.Sathe, J.
Dated : 26th July, 2007

P.C.

1. Heard both the learned advocates. Perused the papers.

2. Plaintiffs filed suit for specific performance of agreement to sale against the defendants and the trial court decreed the same. Being aggrieved by the said order, the defendants filed Regular Civil Appeal No.99 of 2000. The First Appellate Court confirmed the decree for specific performance and dismissed the appeal. Hence the present second appeal.

3. Shri Surel Shah, learned advocate for the defendants argued before me that the courts below

have not properly appreciated the evidence on record and have wrongly accepted the plaintiffs evidence and in particular Exhibit 50 i.e Agreement to Sale and the acknowledgement at Exhibit 53. Though, it was pointed out that the original defendant No.5 Arjun Nana Gadgade has not signed the agreement to sale, and Exhibit 50 shows that he has put his thumb impression on the same. Exhibit 51 shows that he has put his signature. So, according to the learned advocate the said evidence was sufficient to show that the said documents were forged. But the courts below have not considered this aspect and as such there is substantial question of law involved in the matter.

4. It is true that Exhibit 50 shows that Arjun Nana Gadgade has put his thumb impression while Exhibit 51 shows that he has put his signature. However, the learned First Appellate Judge has considered this aspect in detail and has observed that it appears that some times he used to put thumb impression and some times he used to put his signature. For that purpose he has also pointed out similar example out of these very documents. We do find that many a times, illiterate people who have

only learned to put signature, are not consistent. Sometimes they put the signatures and when somebody asks them to put the thumb impression, they put the thumb impression. So, merely because there is such discrepancy in the two documents executed by them, one cannot discard the same. As this has happened in the instant case, it was duty of the defendant to specifically adduce evidence to show that the thumb impression appearing on Exhibit 50 was not of Arjun i.e. the original defendant No.5 and the signature appearing on Exhibit 51 was also not of Arjun. But no such attempt is made by the defendant. The disputed documents were not sent to handwriting expert. On the contrary, we find that even on the Vakalatnama, Arjun Nana Gadgade has put his thumb impression. On the agreement to sale in question also there is his thumb impression. So, there is no substance in the argument advanced by the learned advocate for the defendants in this behalf. Moreover, both the courts below have considered the entire evidence in its proper perspective and recorded the concurrent finding of fact that plaintiff has proved the agreement to sale and the defendants have committed breach of the same, and plaintiff is entitled for specific performance. The

concurrent finding of fact cannot be challenged in the present appeal particularly when there is nothing on record to show that the same is perverse.

5. Hence, I have no hesitation to hold that there is no substantial question of law involved in the present appeal. The appeal is dismissed in limine.

(S.R.Sathe, J.)